

We have learned that a group of individuals is advocating for renters and doing so by engaging in “protest” activity from within their vehicles. Because this protest is occurring during a pandemic, where stay-at-home and social distancing orders have been issued, the organizers are claiming that this method is the only way to protest. (See paragraph 5 of their fact sheet (“Do NOT attend on foot or on a bike, please. It is extremely important to maintain social distance, and the only way to really safely do that is from cars”).)

Officers should always be familiar with the various local and State laws (and the status of those laws) which govern behavior and activities (whether or not expressive) conducted in public spaces. For example, while California Vehicle Code §27001 regulates the use of a car horn on the public road, a driver in San Diego is presently challenging the application of this law against her use of her car horn to communicate her show of support to protestors on the sidewalk (alleging a violation of her 1<sup>st</sup> Amendment rights). While that case has not been fully adjudicated, it does raise some of the very issues that are at play here. Officers should therefore be aware of the following:

**A. Honking may be expressive conduct protected by the First Amendment**

Honking a car horn may rise to the level of *expressive conduct* protected by the First Amendment when the context in which the horn is used allows the audience to understand it as such. Here, in addition to horn honking, we believe that the protesters may decorate their cars with signs or banners which say something like “Cancel Rent”, “No Vacancies”, “Garcetti, Work for Tenants”, or some similar expression of their view.

**B. All public streets, including the street in front of the Mayor’s residence and any residence of a politician are Public Fora**

Courts have held that sidewalks, streets and parks have immemorially been held in trust for the use of the public and have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.

**C. Any regulation of expressive activity in a public forum must qualify as a reasonable time, place and manner restriction on speech or expression**

Laws that regulate *content* of expression are presumptively unconstitutional and the government must prove that they serve a compelling state interest and must be narrowly written to achieve that interest. While VC§ 27001, as written, is “content-neutral,” if it is applied only against drivers who are engaged in a particular message and not others – an argument exists that enforcement of this law is based on the content of the speakers’ message (thereby making its application “content-based.”)

For the government to impose reasonable time, place and manner restrictions on speech, the regulation (i.e., Code section) being enforced must be content neutral, narrowly tailored to serve a significant governmental interest, and leave open

ample alternative channels of communication. Based on the above, it is quite possible that a court could find that using VC §27001 against the blowing of horns during a car protest would not meet this standard – as it would effectively create a flat or complete ban on the use of the horn (therefore it would fail the “narrowly tailored” prong).

For this reason, and based on the fact that there is a pending case involving this Vehicle Code section, it would be prudent for us to look at a more nuanced strategy involving the enforcement of certain Los Angeles Municipal Code Sections which regulate as oppose to ban certain noise, and which arguably reflect their composition as valid time, place and manner restrictions. Any enforcement of the below suggested provisions may necessitate a little more work to support its use, but, in the long run, may help us in defending the use of amplified or other noise as a way of balancing the rights of persons to engage in protest with the rights of members of the public to enjoy the peace and quiet of their homes.

## **Advice for Officers**

***The below code sections may be considered for enforcement whether amplified sound/noise is emanating from within or outside of a vehicle.***

***Officers should cite violations using Release from Custody forms. Any additional enforcement should be undertaken only following consultation with a supervisor.***

***Prior to issuing any citations, warnings should be provided and voluntary compliance sought.***

### **LAMC 41.57** – Loud and Raucous Noise Prohibited from a Sound Amplifying Device

In order to give someone a citation for a violation of this section you will need:

1. **A victim** or more than one. This means someone who is complaining that their peace and quiet was ***unreasonably*** interfered with. As such, take down everything the victim tells you. After that, ask at least the following questions:
  - a. What would the victim usually be doing at the time of the day?
  - b. How has the noise interfered with that activity?
  - c. How has the noise interfered with any other activity that the victim would like to engage in?
  - d. Is there anything the victim can do to avoid the noise? Here the answer may be no and that should be noted.
  - e. Is the noise interfering with their peace in another demonstrable way, besides making them change their routine (i.e. headache)?
2. **To Note the Time**
  - a. Note the time and day the protest happened.
  - b. Compare what is happening on the day of the protest to what is the usual level of noise, traffic etc. that normally exists at that time on that day of the week at that location.
3. **To Note the Place**
  - a. Is the noise occurring in a residential or commercial zone?
  - b. What are the parameters of the protest? For example, between First and Second on Main Street.
4. **To Describe the Nature and Circumstances of the Amplified Noise.**

With specificity note at least the following:

  - a. Is the ***amplified*** noise a human voice, music, or a sound?
  - b. Although decibel readings are not required to trigger a violation of this section, to the extent that a decibel reader is deployed, include any readings. (NOTE: Only include where a dB-reader is used by someone trained in its use.)
  - c. Is the noise constant and incessant or intermittent and spread out?

- d. If it is a sound that is not a voice or music, what is it? Is it a screech, a squawk, a high pitched whistle, a honk.
- e. Where is the amplified noise coming from? Is it from one car? Is it from many cars? Is it from one bullhorn in a car? Many bullhorns? Speakers in a pickup truck? Note all of the sources of noise.

**LAMC 115.02(b)** - Prohibition and Regulation re use or operation of sound amplifying equipment (which may include a car horn). This Code Section prohibits the use of sound amplifying equipment in a fixed or mobile position for the purpose of giving instructions, directions, talks, addresses or assemblages of person in or upon any public street, **when all of the following conditions are present:**

- 1. It is for a non-commercial purpose; **and**
- 2. It is in a residential zone or within 500 feet of a residential zone; **and**
- 3. It is after 4:30 p.m. or before 9:00 a.m.

**If any one of the above three conditions is not present, you don't have a violation of this subsection.**

**LAMC 115.02(f)(1)** - Amplified sound that is allowed under this Section (i.e. that occurs in a commercial zone or between the hours of 9:00 a.m. and 4:30 p.m. in a residential neighborhood) is prohibited under subsection f(1) **IF** it can be heard in excess of 200 feet from its source.

Where enforcement is going to be based on this distance element, an officer must measure more than 200 feet from the source of the amplified sound to determine whether the amplified sound is audible beyond 200 feet.

**LAMC 116.01** - Loud, Unnecessary and Unusual Noise.

It shall be unlawful for any person to willfully make or continue, or cause to be made or continued, any loud, unnecessary, and unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person or normal sensitiveness residing in the area. The standard which may be considered in determining whether a violation of the provisions of this section exists may include but not be limited to the following:

- 1. Level of noise;
- 2. Whether the nature of the noise is usual or unusual;
- 3. Whether the origin of the noise is natural or unnatural;
- 4. The level an intensity of the background noise, if any;
- 5. The proximity of the noise to residential sleeping facilities;
- 6. The nature and zoning of the area within which the noise emanates;
- 7. The density of the inhabitation of the area within which the noise emanates;
- 8. The time of day or night that the noise occurs;
- 9. The duration of the noise;
- 10. Whether the noise is recurrent, intermittent or constant; and

11. Whether the noise is produced by a commercial or noncommercial activity.

***Officers should consider the above criteria in determining whether a violation of Section 116.01 is occurring. If an officer determines that a violation is presented, he/she should cite the violator by using LAMC §116.01 as the citing offense, and describe, using as much factual detail as possible, all such factors that caused the officer to conclude a violation was occurring.***

### **§56.45(e) Targeted Picketing or Protesting of Private Residence**

This section prohibits any person, acting alone or in concert with others from picketing, parading, or patrolling in a manner that is both:

1. focused upon the private residence or dwelling of any individual residing within the City of Los Angeles, and
2. takes place within one hundred (100) feet of such private residence (not the property line).

NOTE: Nothing in this subsection shall prohibit generally the peaceful picketing or distributing pamphlets, going door-to-door, alone or in groups, in residential neighborhoods, unless it is prohibited by one of the above listed sections.

#### ***What is NOT prohibited:***

1. It is ok for protesters to march from (or drive from) one corner to the other (past the target house), or farther along the block on either side of the residence at issue. What is not ok (and what violates this Section) is setting up or otherwise "focusing" the protest/picketing activity in front of a single residence.
- 2 The 100-foot distance should be measured **from the residence**, not the property line.
3. All existing noise ordinances apply. This includes those that prohibit amplified sound ordinances listed above.

***Finally, as stated at the beginning, officers should cite violations using Release from Custody forms. Any additional enforcement should be undertaken only following consultation with a supervisor.***

***Prior to issuing any citations, warnings should be provided and voluntary compliance sought.***

